

Region 8 Executive Order 13650 Workgroup

U.S. Department of Labor/OSHA • U.S. Department of Homeland Security • U.S. Environmental Protection Agency

Standard Operating Procedure: Federal Program Triggers

- **Purpose:** This SOP details the responsibilities of and notifications made by EPA, OSHA, and DHS due in response to incidents as related to EO 13650.
- **Scope:** This SOP applies to the U.S. Environmental Protection Agency (EPA), U.S. Department of Labor Occupational Safety and Health Administration (OSHA), and U.S. Department of Homeland Security (DHS) Critical Infrastructure Program. Region 8 includes Colorado, Montana, Utah, Wyoming, North Dakota, South Dakota, and 27 Tribal nations.
- **Prerequisites:** None.
- **Responsibilities:** The Region 8 Executive Order 13650 (EO) Workgroup, comprised of EPA, OSHA, and DHS, is responsible for developing and implementing SOPs which will increase chemical hazard prevention and preparedness at the federal, State, tribal, and local levels. This responsibility is the result of the Presidential Executive Order 13650 on Chemical Facility Safety and Security, as well as the report to the White House developed by the National Chemical Facility Safety and Security Working Group. The report committed “each Regional Response Team (RRT) develop SOPs tailored to their respective regions,” based on the templates developed by the Region 2 Working Group.

The Workgroup is responsible for responding to incidents when certain criteria are met.

- **Procedures:** The Workgroup hereby reinforces its statutory triggers for responding to a chemical facility incident.

EPA

EPA R8 responds in accordance with the National Contingency Plan (NCP) regulations and related statutory authorities and the policies defined in the Region 8 Regional Contingency Plan (RCP).

Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA):

- Whenever any hazardous substance is released or there is a substantial threat of such a release into the environment, or there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, EPA is authorized to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan deemed necessary to protect the public health or welfare or the environment.
- Limitations to response include release or threat of release
 - a. of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;
 - b. from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or
 - c. into public or private drinking water supplies due to deterioration of the system through ordinary use.

Clean Water Act Section 311

Under the Clean Water Act (CWA) Section 311, EPA is authorized to respond when there is a discharge of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, in such quantities as may be harmful to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

Determinations to Initiate Response and Special Conditions

In accordance with CWA and CERCLA, the Administrator of EPA is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil or releases of hazardous substances, pollutants, or contaminants except with respect to such releases on or from vessels or facilities under the jurisdiction, custody, or control of other federal agencies.

- Where appropriate, when a discharge or release involves radioactive materials, the lead or support federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan.
- Removal actions involving nuclear weapons should be conducted in accordance with the

joint Department of Defense, Department of Energy, and Federal Emergency Management Agency (FEMA) Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

- If the situation is beyond the capability of State and local governments and the statutory authority of federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the governor and declare a major disaster or emergency and appoint a Federal Coordinating Officer to coordinate all federal disaster assistance activities.

Regional Response Team Activation

The RRT will be activated upon request from the Federal On-Scene Coordinator (OSC) or from any RRT representative to the chair of the RRT. Requests can be made by phone, email, or other means.

Requests for RRT activation shall subsequently be confirmed in writing and/or in email. Local requests for RRT activation must be made through the State RRT member. An incident-specific RRT activation may take place by telephone, by assembly, or by email. Levels of activation are listed below:

- Alert: Notification of RRT members that an incident has occurred.
- Standby: Notice to some or all RRT members that their services may be needed and they are to assume a readiness posture and await further instructions.
- Partial: Notice to selected RRT members that their services are required in response to a discharge of oil or release of hazardous substances, pollutants, and contaminants. The activation notice will specify the services requested and the services that will be required.
- Full: Notice to all RRT members (except representatives of non-affected States) that their services are requested in response to a discharge of oil or release of hazardous substances, pollutants, and contaminants. The activation notice will specify the services requested from each RRT member. Services of some members may be limited to advising the Federal OSC on general matters. The incident-specific RRT can be deactivated by the chair when the chair determines that the Federal OSC no longer requires RRT assistance.

An incident-specific Regional Response Team (RRT) may be activated in accordance with the NCP and/or Region 8 policy when a discharge or release:

- Exceeds the response capabilities available to the Federal OSC in the place where it occurs;
- Transects State, regional, or international boundaries;

- Poses a substantial threat to public health, welfare, or to the environment, or to regionally significant amounts of property;
- Is a worst-case discharge (WCD); or
- Necessitates chemical countermeasures.

Notification and Communication

Anyone who identifies or observes a discharge or release should report the spill to the National Response Center (NRC); however, it is the spiller's legal responsibility to report all spills. Notice of an oil discharge or release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with the CWA and CERCLA under 33 CFR Part 153, Subpart B, and 40 CFR Part 302, respectively. The NRC is the national communications center for handling activities related to response actions. The NRC acts as the single point of contact for all spill reporting. In Region 8, NRC notifications are sent to EPA, The Department of Interior (DOI), United States Department of Agriculture/United States Fish and Wildlife Service, affected States, and other potentially impacted agencies.

The NRC will notify a Federal OSC through the Region 8 Emergency Operations Center (REOC)—the regional site for notification, communication, and interagency coordination during a pollution incident. If NRC notification is not practicable, the responsible party should notify the EPA REOC and the appropriate State environmental agency. Such reports will be promptly relayed to the NRC.

If the EPA REOC is the first to be notified of a discharge or release, the REOC will notify the NRC, the States impacted by the incident, the appropriate trustees for natural resources and other RRT members, as Stated throughout this RCP and Annex III – Region 8 Fish and Wildlife and Sensitive Environments Plan. For spills of significance, if the State or other agency is the first to be notified, it shall also notify the appropriate federal agencies.

In addition, facilities may be required to report releases of specified hazardous substances to the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) under Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. Section 11004.

Upon notification from the NRC, the Federal OSC will investigate the report to determine the threat posed to public health or welfare or the environment. NRC notifications serve as initial notification to natural resource trustees and other stakeholders that a release or discharge has occurred. The OSC shall ensure that the trustees for natural resources are promptly notified of discharges or releases. Where the OSC becomes aware that a discharge

or release may affect any endangered or threatened species or their habitat, the OSC shall consult with DOI or the Department of Commerce National Oceanic and Atmospheric Administration and, if appropriate, the cognizant federal land managing agency.

Additionally, the Federal OSC will notify the Department of Health and Human Services and OSHA RRT representative for assistance in determining public health threats and for advice on worker health and safety problems. If radioactive substances are present in a release, the EPA Radiation Program Manager should be notified for evaluation and assistance

DHS

DHS adheres to the advisement of the National Infrastructure Coordinating Council to react to incidents at regulated facilities as well as non-regulated facilities. Upon notification of an incident, the Infrastructure Security Compliance Division (ISCD) will research the facility of interest and respond after the event with either a phone call or visit from a local Chemical Security Inspector. Actions that follow will be defined by the event (release, theft/diversion or sabotage) and will be determined by the CFATS regulation of 2014 as well as Headquarters directives. DHS/ISCD CFATS inspectors do not act as first responders during emergencies

OSHA

Upon notification by OSHA National Office, or upon request by the EPA, FEMA, or DHS, OSHA will provide safety and health professionals to supply guidance on addressing issues concerning worker safety and health. This includes assistance with job hazard analysis, evaluation of engineering controls and personal protective equipment, air monitoring devices and strategies, site entry and exit protocols, as well as the mitigation of safety and health hazards.

Depending upon the nature of the incident, there will be times when OSHA may already be addressing issues related to that incident. For example, if a chemical release resulted in a workplace fatality, OSHA staff may be conducting an inspection of that site. OSHA will work in cooperation with its partner agencies in responding to these incidents.

FEMA

In the event of a declaration of a major disaster by the President, the FEMA may activate the Federal Response Plan (FRP). A FCO, designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP

known as Emergency Support Functions (ESFs). EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

6. References:

- a) Executive Order 13650: Actions to Improve Chemical Facility Safety and Security – A Shared Commitment: Report for the President, May, 2014.
- b) Executive Order 13650: Improving Chemical Facility Safety and Security, August 1, 2013
- c) Federal Region 8 Regional Contingency Plan, December 30, 2014
- d) 40 CFR 300 – National Oil and Hazardous Substances Pollution Contingency Plan (NCP)
- e) Federal Emergency Management Agency (FEMA) Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

7. Definitions:

Chemical Facility Anti-Terrorism Standards (CFATS): The U.S. Department of Homeland Security implements a rule that imposes comprehensive federal security regulations for high-risk chemical facilities. This rule establishes risk-based performance standards for the security of our nation's chemical facilities. It requires covered chemical facilities to prepare Security Vulnerability Assessments, which identify facility security vulnerabilities, and to develop and implement Site Security Plans, which include measures that satisfy the identified risk-based performance standards. It also allows certain covered chemical facilities, in specified circumstances, to submit Alternate Security Programs in lieu of a Security Vulnerability Assessment, Site Security Plan, or both.

Emergency Planning and Community Right to Know Act (EPCRA): The Emergency Planning and Community Right to Know Act requires that facilities which must prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 must submit a MSDS and Tier I/II inventory form for each such chemical to the appropriate LEPC, the Fire Department with jurisdiction over the facility, and the SERC.

National Oil and Hazardous Substances Pollution Contingency Plan (NCP):

The National Oil and Hazardous Substances Pollution Contingency Plan, more commonly called the National Contingency Plan or NCP, is the federal government's blueprint for responding to both oil spills and hazardous substance releases. The NCP is the result of efforts to develop a national response capability and promote coordination among the

hierarchy of responders and contingency plans.

Regional Response Teams (RRTs): There are 13 Regional Response Teams (RRTs), one for each of the ten federal regions, plus one for Alaska, one for the Caribbean, and one for the Pacific Basin. Each RRT maintains an RCP and has State, tribal, and federal government representation. EPA and the Coast Guard co-chair the RRTs. Like the National Response Team (NRT), the standing RRTs are planning, policy and coordinating bodies and do not respond directly to the scene of a removal or emergency response. The RRT provides assistance as requested by the OSC during an incident.

Risk Management Plan (RMP): The Risk Management Plan (RMP) Rule implements Section 112(r) of the 1990 Clean Air Act amendments. RMP requires facilities that use extremely hazardous substances to develop a Risk Management Plan. These plans must be revised and resubmitted to EPA every five years. Section 112(r) of the Clean Air Act Amendments requires EPA to publish regulations and guidance for chemical accident prevention at facilities that use extremely hazardous substances. These regulations and guidance are contained in the Risk Management Plan (RMP) rule. The information required from facilities under RMP helps local fire, police, and emergency response personnel prepare for and respond to chemical emergencies. Making RMPs available to the public also fosters communication and awareness to improve accident prevention and emergency response practices at the local level. The RMP rule was built upon existing industry codes and standards. It requires companies that use certain flammable and toxic substance to develop a Risk Management Program.

State Emergency Response Commission (SERC) - The agency appointed by the Governor to oversee the administration of EPCRA at the State level. This commission designates and appoints members to LEPCs and reviews emergency response plans for cities and counties.